

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 2000 Session

TOWN OF NOLENSVILLE v. RONALD M. KING

**Appeal from the Circuit Court for Williamson County
No. I-99517 Russ Heldman, Judge**

No. M1999-02512-COA-R3-CV - Filed September 14, 2000

This appeal arises from the enforcement of the Town of Nolensville's ordinance outlawing the storage of abandoned or unusable automobiles and storage trailers within its city limits. After the Nolensville City Court entered a judgment against him for \$18,600, a town resident petitioned the Circuit Court for Williamson County for a common-law writ of certiorari seeking to set aside the city court's judgment because he had been deprived of his right to a jury trial. The trial court granted the writ and set aside the city court's judgment based on its conclusion that Tenn. Const. art. VI, § 14 guarantees the right to a jury trial for fines in excess of fifty dollars. We have determined that the trial court misconstrued Tenn. Const. art. VI, § 14 and, therefore, we vacate the order granting the writ of certiorari and remand the case to the trial court with directions to dismiss the petition for writ of certiorari.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Robert J. Notestine, III, Nashville, Tennessee, for the appellant, Town of Nolensville.

John E. Herbison, Nashville, Tennessee, for the appellee, Ronald M. King.

OPINION

The Town of Nolensville has an ordinance prohibiting the accumulation of trash, litter, and garbage on real property within the town limits. The ordinance includes abandoned and unusable automobiles and storage trailers. Violations of this ordinance carry a "penalty" of up to \$500 for each offense, and each day a violation continues constitutes a separate offense.

On April 19, 1999, Ronald M. King was cited for violating the ordinance because he was storing an inoperative vehicle, a semi-trailer, and assorted piles of scrap and wooden pallets on his property. On April 24, 1999, the Nolensville City Court ordered Mr. King to pay \$50 for violating

the ordinance but suspended its order for thirty days to give Mr. King an opportunity to clean up his property. Mr. King paid no heed and on May 29, 1999, received another citation for violating the ordinance. At a second hearing on June 26, 1999, the city court again found Mr. King guilty of violating the ordinance but continued the proceeding for sixty days after Mr. King promised to clean up his property. The city court specifically stated that the case against Mr. King would be dismissed if he cleaned up his property within sixty days.

The city court conducted a third hearing on August 28, 1999. After determining that Mr. King had not fulfilled his commitment to bring his property into compliance, the city court determined that he had violated the ordinance for sixty-two days. The trial court also determined that Mr. King should pay \$300 for each separate violation. Because the ordinance provided that each day of nonconformance was a separate violation, the city court awarded the Town of Nolensville a judgment against Mr. King for \$18,600.

On September 8, 1999, Mr. King filed a petition for common-law writ of certiorari in the Circuit Court for Williamson County asserting that the city court had violated Tenn. Const. art. VI, § 14 by imposing a fine in excess of fifty dollars without affording him a jury trial. Simultaneously, Mr. King filed a notice of appeal from the city court's judgment.¹ Following an October 11, 1999 hearing, the trial court filed a memorandum opinion and order on November 12, 1999, granting Mr. King's petition for writ of certiorari, vacating the city court's \$18,600 judgment, and remanding the case to the city court for the entry of a judgment not to exceed \$50. The trial court based the decision on its conclusions that Mr. King was entitled to a jury trial in proceedings where the penalty could exceed \$50 and that Mr. King had not waived his right to a jury trial in the city court proceedings. The trial court also dismissed Mr. King's de novo appeal without prejudice at the request of Mr. King's counsel. The Town of Nolensville has appealed.

I.

Mr. King's argument that Tenn. Const. art. VI, § 14 guarantees him the right to a jury trial in the city court is not new to this court. We recently considered a similar argument in a case involving the imposition of a \$500 "fine" for violating a Nashville ordinance that required obtaining a building permit prior to repairing a building. We concluded that the appellant's reliance on Tenn. Const. art. VI, § 14 was misplaced for two reasons. First, the "fine" or penalty resulting from the violation of the city ordinance was in the nature of a civil debt that was not covered by Tenn. Const. art. VI, § 14. Second, we pointed out that the appellant could have easily obtained the jury trial he desired simply by pursuing a de novo appeal in accordance with Tenn. Code Ann. § 27-5-108 (1980) and by requesting a jury trial. *Barrett v. Metropolitan Government*, No. M1999-01130-COA-R3-

¹That Mr. King would file this notice of appeal is somewhat mystifying because he had alleged in his petition for writ of certiorari that the de novo appeal afforded by Tenn. Code Ann. § 27-5-102 (1980) was "inadequate."

CV, 2000 WL 798657, at *2 (Tenn. Ct. App. June 22, 2000).² Our decision in *Barrett v. Metropolitan Government* is fully applicable to this case. Therefore, based on the reasoning in *Barrett v. Metropolitan Government*, we find that Mr. King was not deprived of a right to a jury trial guaranteed by Tenn. Const. art. VI, § 14 because the \$18,600 judgment against him was for a civil debt rather than a criminal fine and because he could have had a jury trial had he pursued an appeal de novo in accordance with Tenn. Code Ann. § 27-5-102.

II.

The trial court's order granting the writ of certiorari and vacating the judgment of the Nolensville City Court is reversed, and the case is remanded to the trial court with directions that Mr. King's petition for writ of common-law certiorari be dismissed.³ We tax the costs of this appeal to Ronald M. King for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUDGE

² An application for permission to appeal has been filed in this case, but the Tennessee Supreme Court has not acted on the application.

³ The fate of Mr. King's de novo appeal that the trial court dismissed without prejudice was discussed during oral argument. Mr. King has not formally requested that his de novo appeal be reinstated should the trial court's decision to grant the petition for common-law writ of certiorari be reversed. Our decision to reverse the trial court's decision to grant the common-law writ of certiorari does not automatically reinstate Mr. King's appeal pursuant to Tenn. Code Ann. § 27-5-102. Mr. King made a tactical decision to pursue two different remedies to circumvent the \$18,600 city court judgment against him – the petition for common-law writ of certiorari and the de novo appeal pursuant to Tenn. Code Ann. § 27-5-102. When given the choice, he elected to pursue his remedies under the common-law writ of certiorari because he believed that the de novo appeal remedy was “inadequate.” Accordingly, during the October 11, 1999 proceedings, Mr. King's lawyer announced that he “would not contest a dismissal of that appeal [the appeal de novo] without prejudice.” This choice of remedy is now irrevocable because Mr. King has pursued his certiorari remedy to its determinative conclusion. He is thus estopped from pursuing the remedy he abandoned even though the remedy he chose proved to be unsuccessful. *Davis v. Tennessee Dep't of Employment Security*, 23 S.W.3d. 304, 309-10 (Tenn. Ct. App. 1999).